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Questions and Answers with the Three Major Figures of Divestiture

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■
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Henry Geller: I pose my question to Charles Brown—although I would welcome Bill Baxter's answer. Looking back with hindsight, what factors that went into your decision to agree to divestiture do you regard as still very sound, and what turned out in your opinion not to be very useful?

Charles Brown: The factors that led me to make the decision centered around the very difficult situation AT&T was in at that time. What it amounted to was a series of alternatives; the divestiture was the least worst of them. As far as my expectations being realized, I think the relatively slow pace at which federal and state regulation is decreasing is a disappointment and a major factor in why the divestiture setup has not worked as well as it might.

Geller: Did you think it was inevitable, once the FCC authorized competition, that it was the proverbial slippery slope, with your competitors in toll successfully demonstrating your essential bottleneck? What would have happened, for example, if we had given you a Chinese menu and proposed that you divest three jewels only as benchmarks—one of them a jewel and two of them lesser companies—and cloned Western Electric?

Brown: Had we gone with some solution like that, I think probably either Bill Baxter, his successor, or Congress would be on our back for some other change a few years later. Although I might have been inclined to go along with such a thing in order to avoid complete disruption of the Bell System, I suspect it would not have lasted very long. There were other solutions, a number of which were acceptable to us. But each time we got into the Congressional mill, each solution got worse as Congress and its helpers operated on it. At the same time, Bill Baxter's people were constructing what we called Quagmires I and II, which were essentially injunctive relief: thou shall not do this, that, and the other, and thou shalt be separated one department from another, and the Bell Labs cannot talk to the Western Electric, and so on. As to that "solution," the longer it was worked on, the worse it got. So there were other answers, and had they stopped at an early enough stage, they might have been acceptable.

William Baxter: The slippery slope question intrigues me. I can imagine someone at AT&T deciding early on that there was a slippery policy slope out there, and that the way to head it off would be to afford manifestly equal interconnection to anybody who asked for it. If that had been done in some number of cases, and the practice had brought about a sufficient level of competition in the complementary activities, would pressure for divestiture have been fended off? It would have been an incredible feat of foresight to have done that, and to have run against what I believe are the inherent incentive structures that arise in a regulated industry where the industry is permitted to diversify across a regulatory boundary. Although it seems to me the slippery slope argument overstates inevitability as a theoretical matter, I do not think it overstates inevitability as a practical matter.

Brown: Just one point there. AT&T had been working on the interconnection matter long before the MFJ. This was not a simple piece of business. It took us some years to actually get the plan, the hardware and the software, and to put equal access into effect. We knew that this was necessary, and we were about doing it.

Stanley Besen: The theory of the case has been described as an "elegant" one in that it envisioned the separation of the naturally monopolistic from the potentially competitive part of the business. A related objective was to change and simplify the nature of the regulatory scheme. Yet, a rather substantial amount of regulation continues, and, in fact, in some people's views, regulation has actually increased. At the time of the negotiation leading to the MFJ, did you anticipate there would be a substantial increase in regulation, at least for a time? Alternatively, do you believe, despite the increase in regulation, there is less than there might have been had divestiture not occurred?

Baxter: Of course, the solution that might be called an "elegant" solution unfortunately was never tried. It was rejected by the Court right from the first with the political injunction against AT&T engaging in publishing, and there were some very ill-advised exceptions—the sale of customer premises equipment (CPE), and the disposition of the Yellow Pages. So what was tried was at best a rough approximation of the "elegant" solution, one that from the beginning had as one of its consequences much more extensive, continuing government involvement than might have been necessary if we had tried the "elegant" solution.

It was perfectly clear to me, for example, that you could not permit the companies to sell CPE without constant attention to a totally unprincipled line between manufacturing, research and development, design, and sales. That was an inevitable mess from day one.

Having said all those things though, I absolutely did not foresee, and would have been horrified had I been able to foresee, the extent to which regulation has continued. Certainly, I did not think it was going to go away tomorrow. But it definitely was my hope and expectation that once AT&T was severed from the local loops, it would expeditiously be deregulated and be regarded as being in the competitive sector. I still see no reason why that could not have happened, and I believe it should have happened.

Brown: I do not have anything to add to that. Both sides, of course, had the option to refuse these provisions inserted by Judge Greene. From AT&T's standpoint, by the time these exceptions surfaced, we were deep into reorganization turmoil, added to the turmoil of the three-ring circus which preceeded the MFJ decision. To visualize these decree changes, or points climbing up through the court ladder, while Bill McGowan [Chairman of MCI] and others were taking chunks of the market, was not a very savory prospect. I assume Bill Baxter had no taste for that either. We had traveled far enough, and these exceptions

the Judge produced were not enough to force us through another long legal struggle.

Baxter: It is difficult to overstate the element of momentum that gets involved in a major litigation of this sort. Having aborted the litigation in January, and with the lawyers drifting to other matters, putting that litigation together again in August, eight months later, although not impossible, certainly was an unappealing proposition. I assume it would have been unappealing to AT&T as well.

Geller: Let me just follow up on one thing though. You said that the pure "elegant" theory got contaminated, but even without it, under the department's theory, you were still going to prescribe information services, manufacturing sale, and certainly manufacturing. AT&T said they were very motivated to have the decree because they were in the business of information movement and management. Did you not think the BOCs, the divested companies, would also want to be in the business of information management and information services, and that you were going to be immediately in a regulatory battle as they moved to try to do that over the years?

Baxter: It happened, yes indeed. It was no surprise to me that they wanted to be in those activities, although I was proposing a decree that said they could not be in those activities. And if that line had been drawn hard and sharp and with credibility from the outset, it seems to me the BOCs would have set about doing what would then have been the next best thing for them—really developing a kind of equal access that would promote development and investment in those information activities by an independent set of providers. But that line was never drawn with credibility, and the BOCs had every incentive, instead, to hang out as long as possible and see if they could not creep across that line. The situation created strong incentives not to bring equal interconnection into existence. And of course we are still waiting for Open Network Architecture (ONA).

Brown: AT&T has stood back from this one. It really did not make a critical difference to AT&T as long as the information barriers did not affect the core of the consent decree—the bans on manufacturing and long-distance. I do not think they do infringe on it in most cases.

I would like to point out something here. Some people have asked me what happened in these negotiations between Bill Baxter and myself. My answer has always been there were not any negotiations to speak of. There were these quagmires that were being constructed to come up with some sort of an injunctive consent decree, and there were

a number of plans in Congress. We negotiated for many years on those. But the decree was what my lawyer called a two-pager. When the DOJ found out we might be willing to accept a decree which left the carrying out of the separation in the hands of AT&T, then it was a fairly clear track. It is very simple, short, and clear. So there was not much negotiation. We had a little fight about some things that I do not think Bill ever understood. But they were so peripheral and minor, compared to the things that really were the guts of the decree, that there were not many negotiations. Perhaps I have overstated that.

Baxter: No, I do not think you have. Once I studied the case, it seemed to me that we had a winning hand. Howard Treinens, AT&T's general counsel, came around in April 1981 and asked if there was a basis by which we might settle this. I said, "Yes, spin off all the local operating companies." And he kind of laughed and replied, "Well, I won't even talk to my management about that." And I said, "Fine." As the trial progressed, it seemed to me the heat got turned up and turned up. We were just about to go back to trial in January 1982, and my own guess was that the next session of litigation was going to be bad news for the company. When negotiations did not proceed as I wished with respect to the details Charlie mentioned, it seemed to me a good way of demonstrating that I was not under any time pressure was to take a vacation, which I did. And we finished up the decree by phone within the next three or four days. The remaining issues were not at all ones I regarded as details.

Besen: May I go back and see if I can understand the precise point you were making earlier when you talked about the revisions in the original decree as originally proposed? They obviously were not deal breakers; the deal went through. But I take it from your remarks here, they in fact caused some of the subsequent regulatory difficulties. Is that a fair statement?

Baxter: I think the most important thing about them was they indicated a state-of-mind on the part of the Judge that he was receptive to an endless succession of petitions—a kind of "Mother, may I?" game that was going to go on for a very long time. It was precisely the exhibition of that attitude on his part that sentenced us to having two regulators rather than one for a long period of time. Certainly, it was my notion that there would be a clean cut on the entry of the decree. The problem would be remanded to the FCC which had jurisdiction, and the Court would more or less step out of the picture. That is the way it should have worked, and I continue to be disappointed that it did not.

Geller: With the Triennial Review, at the end of that process, if there was a need for some revision, the matter would have gone over to the FCC and not remained with the Judge.

Baxter: Of course, the Triennial Review itself was a feature that was introduced at a much later period in time and fairly at the insistence of the Judge. No Triennial Review was needed with what Stan Besen referred to as the "elegant" solution.

Brown: To add to that, there seems to be continual confusion among industry watchers between regulation and the jurisdictional control of a consent decree.

Geller: Bill Baxter said he was sorry AT&T did not get the full deregulation the decree contemplated. And here we are, in 1989, with 43,000 route miles of fiber put in by MCI and US Sprint, and 80 percent cut over to equal access. Do you think that AT&T should have obtained more deregulatory benefits from divestiture than it has thus far?

Brown: I was not so naive as to think both the interstate and intrastate regulatory apparati would go away in a very short time. The elimination of the Civil Aeronautics Board example is a very rare one, and I certainly did not expect those particular organizations, federal and state, would go away. But I did think more deregulation would take place, that regulatory bodies would back off a lot faster than has actually occurred. Also, I have to clarify the idea that this was some sort of deal with the government by which we would give up the operating companies, and, as a reward or as a quid pro quo, get deregulated. One of the difficulties I faced was that we would not get a deal with anybody in the federal establishment except Bill Baxter. He was the only one who could sign an agreement and make it stick. So, the idea of having a "deal" with anybody else to do anything else was just not practical.

Geller: Congress would not come through?

Brown: That is another long story. They were not coming up with anything we felt we could live with and still do the job they and the people of the country expected us to do.

Geller: A follow-up for Bill: the Judge did put in a waiver, a specific waiver in Section VIII (C) of the MFJ which asks if the BOCs have a monopoly of bottleneck facilities such that they could substantially inhibit competition in the line of commerce? When he recently got to the issue of an infrastructure for videotex, he did not use VIII (C); he abandoned it and used the cost-benefit test—i.e. would the nation,

competition, the consumer be better off? Back then, was consideration given to waivers being decided on a cost-benefit test rather than VIII (C) test? Was it flawed from the beginning?

Baxter: I do not think it was flawed by reason of VIII (C) as such. I do not see anything wrong with that. It was not a question of whether the BOCs continue to have a monopoly. Of course, they continued to have a monopoly, and they were going to continue to have a monopoly pending some enormous technological change that even now is not foreseeable. The real question was whether you were going to stick with the basic concept of the decree. Namely, you did not permit the BOCs, given their monopoly of great economic power, to integrate across the boundaries of that monopoly and into the provision of a wide range of complements. You confine the BOC as narrowly as possible to the very set of assets that gave rise to the scale economies, to the local loop with its joint product feature, that occasioned the problem in the first instance. So the problem, in my view, was not the monopoly test or cross-subsidization test so much as it was setting up a waiver procedure that destroyed credibility and created a bad state of mind on the part of everyone. We did not really mean to live by this flash-cut approach of the decree, and, of course, everyone would be around, hat in hand, with a series of waiver petitions.

Besen: I want to briefly return to the local rate question. I wonder if Charlie Brown is quite as sanguine about the impact of the decree on local rates as Bill Baxter apparently was.

Brown: Perhaps you will excuse me for my brashness in guoting Judge Bork here, but the Standard Oil breakup did not result in any reduction in the price of lamp oil. In other words, the Justice Department, due to its charter I presume, does not worry about things like that. They really weren't worried about local rates either. On the other hand, the principle of low local rates was what drove the Bell System for a hundred years. Having been concerned about that, we could see very clearly that the rates were going to have to go up under divestiture. I predicted eight to ten percent a year for four or five years, and that is just about what has happened. We also predicted, of course, that long-distance rates would come down sharply, which they have. But beyond that, the rate of change in how costs would be allocated and revenues divided was left in the hands of the regulators. More than five years later, we almost have the access charge matter straightened out. All during that five-year period there was a general concern about local prices going up. But, we could see it could be done without a rate shock, and it was.

Geller: In the MFJ, local access and transport areas (LATAs) were carved out—fairly large ones, and within them, they appear to be somewhat a barrier to competition. Just one example: the BOCs have a virtual monopoly on intraLATA toll, and just now that problem is coming to the fore in places like Iowa. At the time, did the Justice Department give consideration to the effect of the size of the LATA on competition within the LATA?

Baxter: Oh, most definitely. We worried about it a great deal. We worried about it, I suppose most explicitly, in conjunction with the several interstate LATAs we were persuaded we would have to create, and there was a trade-off there. I am not sure we cut it at exactly the right balancing point, but one had to define what was long-distance transportation in some way, and one had to also provide for points of presence. One important issue was at how many different points in the telephone network was an MCI or a US Sprint going to have to make a connection. Another way to put it, the question was, "How high up the switching hierarchy does the natural monopoly carry?" Manifestly, the local loops have monopoly characteristics, but as you proceed up the hierarchy, the amount of redundancy that has to be built into the more local trunks gives rise to a scale economy that derives from a law of large numbers. I did not want the other carriers to have to make interconnections in too many places and duplicate too much by way of local trunks. That was interrelated to the size-of-LATA question. I am not at all sure we got it right. Certainly we have thought about it and there was no question in our minds that, to the extent we gave the local operating company an enclave within the LATA, we were giving them a monopoly over whatever communication occurred within that geographic area.

Geller: Twenty-four percent of the toll revenues are intraLATA.

Baxter: I am not sure I knew that number, but certainly I was aware that a lot of communication existed there and we were committing it to the tender mercies of regulated monopoly. We had not succeeded in getting it across into what I was then visualizing as a more or less competitive sector, and that pained me.

Geller: To follow up on a previous question, we do have a waiver; we do have all kinds of regulations. Assistant Attorney General Rule said his staff is being used for regulatory purposes, and it is undermining other projects. The DOJ thought that matters such as information waivers ought to be turned over, for example, to the FCC. Since we

have gone down that road, do you agree that, at this point, waiver requests ought to be shifted to the FCC?

Baxter: Well, I certainly do not want to take the position that the conclusion the department has reached in that regard is unreasonable or unjustified. Regardless of whether I would have made the decision exactly at that point in time, the argument is a perfectly plausible one. Humpty Dumpty will never be put back together again. The world is permanently changed. The Regional Bell Operating Companies (RBOCs) were at each other's throats before we finished working on the LATA problem. Representatives from the different BOCs came in to talk to us about LATAs, and they were competing, sometimes in rather unpleasant tones, before the decree was ever entered. So a kind of competition is out there in the world, a kind of yardstick possibility that will continue to operate as a check that did not exist before. For those reasons among others, it is not clear to me if it would be wrong to say, "Well, it did not come out exactly the way we expected. It has continued to be a regulatory morass, but at least give it back to the FCC. Let us get one of the regulators out of the picture." That does not seem to be an unreasonable conclusion at this point.

Besen: There have been a substantial number of recommendations by the DOJ and others for removal of some of the line-of-business restrictions. At the same time, a new regulatory scheme has been attempted that was not in place at the time of the negotiation of the MFJ, including the ONA and comparably efficient interconnection (CEI) provisions in the FCC's *Computer III* decision. I would like to hear both your views on the efficacy of this particular regulatory scheme and, in particular, how these views affect your retrospective vision of the decree you negotiated.

Brown: Do not ask me. As I should have said before, I have been retired for some two and a half years. I have not caught up with *Computer II* yet! I am not representing AT&T here and I just do not have any comment on that question.

Baxter: I think it is headed in very much the right direction. If the provision of these complementary activities is to occur in a competitive environment, then it has to occur in the hands of a plurality of companies. I do not want to talk about whether that means two or seven, but those competitors cannot face strongly divergent cost structures. I despise the term "level playing field," but I guess it is something like that. But a very interesting question arises. There is ob-

viously some way, as a matter of electrical engineering, to provide equal interconnection to a set of competitors. The question is whether it is significantly more expensive, in real resource terms, than it would be for one company to provide the complement. That is really a question about the reality of asserted economies of scope on the part of the BOC. If it is really true that there are significant economies of scope there, then it follows, almost as a matter of definition, that you cannot have equal interconnection except at a cost significantly higher than the cost for a single company. That is pretty much a definition of the concept of economies of scope. We do not know that yet, and one of the really fascinating things will be to watch the FCC struggle with that problem, and perhaps eventually give us a very interesting answer to the question of how big were the economies of scope in the first instance.

Besen: That brings us back, of course, to the decree. Suppose the question were answered in the affirmative, so there were lots of scope economies.

Baxter: Then the decree looks less wise than it would in the contrary situation. The decree implicitly made a wager that the regulatory distortions of those portions of the economy, which could have been workably competitive, yielded social losses in excess of the magnitude of economies of scope that would be sacrificed by this approach. It was a wager, a guess. It would be absurd to pretend it was made on the basis of detailed econometric data. It was not; we did not have the data. Of course, all other courses from that point were also guesses. Clear proof was not about to become available any time soon. It was a judgment call, and I guess, in some senses, I do not yet know. Maybe we will never know whether it was right or wrong. Charlie?

Brown: A hell of a bet.

Geller: Divestiture opened our domestic market. It has been called "unilateral disarmament." In hindsight, suppose you knew there was going to be this foreign invasion with foreigners not reciprocating, was there some step, anything that could have been done to phase the invasion in, or was your concern exclusively antitrust? The antitrust train was leaving the station, and by God, that was it?

Baxter: Well, I would say neither of those things. I do not view trade deficits the way a lot of people do; I am reminded of a passage in Adam Smith's *Wealth of Nations* that starts off a chapter on international trade with a parable: your nation is greatly advantaged if you have

large, deep, well-sheltered harbors. It goes on to say those harbors are worth a great deal less to you if no other country has decent harbors, because a great deal less shipping will occur. But nevertheless, he says, you can never advance yourself by dumping rocks in your own harbor. That seems to me to sum up the trade situation fairly well.

Geller: I am not uptight about trade deficits either, but the question I was raising was one of fair play in Olde England.

Baxter: The President has a 301 authority. And as I have tried to suggest, we are better off even if trade remains a one-way street than if it were a no-way street. I do not mean to say it might not make perfectly good policy sense for a President to cut off our own nose to spite our face in a way, and to halt that one-way trade as a device for attempting to open foreign markets. It is a costly device to use. One must keep in mind that one is losing while one is using that device. He is dumping rocks in his own harbor. It is a self-destructive kind of predatory behavior. But if it succeds in getting someone else's markets open, then it can make perfectly good sense. It certainly would not have influenced me in the negative to know I was going to increase international trade by taking the divestiture step.

Geller: It would appear Bill Baxter thinks, in the local exchange, we are dealing with the natural monopoly. But there is some indication that a number of people would like to take a crack at the local exchange and that monopoly. Charlie Brown, what do you think is the eventual outcome in this local competition? Is it just niche competition, or is it more? We have had *Computer I, II,* and *III.* Do we need "Divestiture II" to deal with unbundling access and the transport switch?

Brown: I really cannot predict. But it seems to me that the root of whether or not the operating companies are going to face competition lies in technology. And neither here today nor anywhere else have I been able to learn of any technology which would show a significant opportunity for an entrepreneur to compete successfully with a local operating company.

Geller: You do not think digital radio can do it starting ten years out, or digital cellular?

Brown: I do not see, in the next decade, any significant way of bypassing or competing successfully with the operating companies on any large scale, as long as they have a reasonable amount of flexibility to set prices which are related to costs.

Geller: Do you see them in any further problems that might lead to the unbundling or to even hardware unbundling of the local network?

Brown: I had not thought very much about that; it does seem a little bit farfetched to me unless they become hindered by political decisions which keep them from responding in a timely way.

Geller: And call location? Allowing New York Teleport to come directly in and where you separate the transport from the switch?

Brown: That is a version of bypassing [the main public switched network], and it does have some effect. But the effect is so minor on traffic flows and revenues that it is hardly a serious threat. Again, this assumes the BOCs are permitted to act and decide to do so.

Besen: At the end of the century looking back, what do each of you think will be the major benefits that have come from divestiture? What do you think will be the greatest drawbacks, and what do you think will be the balance sheet?

Brown: I would hope, as Bill and everyone else does, that in the post-divestiture world, we see the full benefits of competition and, so far as possible, get rid of the anchor—multiple anchors—of unnecessary regulation. That would do more than anything else to give us an improved balance sheet. I still hope and expect that will occur. As I said before, I think we have to stop confusing regulation with antitrust enforcement. But I believe that will come also, and I am optimistic about the future.

As far as the negatives are concerned, from what I hear listening to people where I used to work who know, the bulk of the residence and local small business customers have not seen net benefits from the upheaval. Their lot has been expense, confusion, and inconvenience in ordering service, getting repairs done, and generally dealing with the telephone system. This is what we expected and gave warning. However, it has been said you can even get used to hanging if you hang long enough, and so perhaps by the end of the century people will have learned to live with the current arrangements without making comparisions with the way things were.

I am perhaps old-fashioned in my belief that a telephone system designed and operated as a "system" has advantages over the results of when each of eight companies act out of self-interest. However, it certainly is the intention of the Regional Bell Companies and AT&T to make divestiture work. There is no incentive on the part of any of these companies, to have poor or more expensive telephone service. The

urgency is all in the opposite direction. There will be a lot scrambling in between, but the incentives are there to make it function as well as it can for everyone.

Geller: What I would raise specifically is perhaps the benefits you get in toll might not be as strong as you think. You get a classic oligopoly, and you get sheltering under AT&T, and your Freddy Laker never really comes to the area. Looking back, the greatest benefit might be that you cloned AT&T seven times and got all the strategic planning, and it might be serendipitous. Would you have any comment on that, Bill?

Baxter: I understand the point, though I do not really agree with it. I think the bet has paid off; I think that AT&T's costs are down; I think what has happened to share prices in ensuing years is some evidence. Obviously, that is not a perfect test. I do not keep close track, but I would take a rough guess that if you take one share of AT&T stock and trace it through the split, the share price has gone up 500 percent since divestiture. Whatever it may be, it has risen a great deal more sharply than the market has over that period of time. I think the bet is paying off. I think we are getting the benefits of competition in the sense that AT&T is subject to less restrictive regulation—although still too much, as far as I am concerned. We have cloned AT&T, and we have seven other companies that can be used as standards of comparison with one another. I continue to think there is room for certain kinds of competition with the local loop. I think cellular has a very important future in that regard. Surely, it is one of the silliest things we ever did to limit local cellular to two licenses and give one of them to the wire line company. But in all those senses, I think we are moving in the right direction.

Brown: I think I would be remiss if I did not point out that the whole Bell System's performance, with respect to the mechanics of divestiture, deserves a tremendous amount of credit here. Only those of us on the inside understood the turmoil and the difficulty, both emotional and physical, in gettting that job done in two years. Bill also reminds me that very rarely are we given credit for taking care of the shareowner in this melee. There are lots of ways we could have divided up the company, but we did it in a way that spun off units in good financial shape and permitted them to do the job they had previously done, as well as get into new fields. I take no credit for what they have done, but I take credit for the fact that they have been spun off in condition to do it. The shareowner became a very important factor once AT&T decided to take this step because, as I kept on telling our people inside

(ad nauseam I'm sure), "it's not our money." We were spinning off 75 percent of the shareholders' assets.

Baxter: I would certainly want to echo that. During that period of time, it was my clear impression that AT&T's management was very consciously devoted to the process of thinking through a sensible restructuring. Indeed, one of the great appeals to me of the decree approach was that I could let AT&T do the restructuring, subject to just a few constraints I had in mind. I was convinced the restructuring would be done a great deal better by AT&T management than it was likely to be done in the District Court, if it came down to that. The decree that had been worked on in the autumn and winter of 1980 seemed, to me, to have far less to recommend than the one with which we wound up.

Besen: We have reserved a block of time for questions from the audience.

Question: Almost from the time the consent agreement was signed, in fact, even a couple of weeks before signature, the regionals began pushing for the lifting of the MFJ restrictions on the lines of business. In the days and weeks that followed, some of them went into court and claimed because AT&T management was not negotiating for them, they should not have been bound by the agreement. What were your reactions to these actions by the different regionals? Had you expected something like that? Did it disappoint you?

Baxter: I guess it did surprise me. As a legal matter, I regarded their position as absolutely ludicrous, and I certainly did not expect it. I do not expect people to take such ludicrous legal positions, and I was surprised by it.

Brown: I was surprised also. It did seem like an extreme position.

Question: Mr. Baxter, you described the guesswork involved in determining what the marketplace looked like. Some observers claim either there were mistakes made, or the marketplace just changed in relation to the economies of scope. Can you give us a sense as to how you would evaluate that claim? What kind of benchmark judgment would you want to use, as a policymaker, to look back on the decree?

Baxter: It is very hard to determine. I would almost not know what to look at as a practical matter to assess the "lost" economies-of-scope side of the balance. I think it would be easier to get quantitative about the "saved" costs of mispricing complementary services. Certainly, one of the things that we have available to look at, and one that is very important, is the comparative price elasticities of local service as op-

posed to long-distance service. The sort of natural experiment we have conducted yields data that would tell us a lot about those elasticities. Residential service has certainly proven to be extremely inelastic, which I would have said was intuitively obvious in 1981. In economic efficiency terms, far more of the joint costs of the loop ought to have been put there in the first instance.

Question: My question relates to services that have not developed as well.

Baxter: Ah. Of course, those are pure losses. If one assumes they would have developed under some other circumstance, then the other circumstance, to that extent, is to be preferred. As I indicated a few minutes ago, I thought they would have occurred to a greater extent if we had not lost credibility about the flash cut.

Question: Has someone actually proposed that LATAs really are inappropriate and trample on intrastate jurisdiction, and thus they should be eliminated? Also, should we go back to intrastate regulation and interstate regulation, leaving interstate primarily to the MCIs and the AT&Ts? IntraLATA is now being opened up to competition and the local commissions have to deal with interLATA and intraLATA cases, and this seems to be a fairly heavy cost of regulation.

Baxter: I do not have any strong views on that one way or another. That is really a question of one's views of federalism, and I can see the argument for that position. I have never been a dyed-in-the-wool federalist myself. I understand, but I am not much persuaded by the argument that it should be okay if a state government wants to facilitate exploitation of its own population.

Question: Fourteen states are single LATA, and only thirty-six have multiple LATAs.

Baxter: I understand. It seems to me it is a perfectly plausible argument; I do not have any conviction one way or the other.

Geller: Gerry Faulhaber notes later in this volume [chapter 11] that AT&T developed a service-inward WATS that changed the entire scope of retail and other business in the United States. The BOCs—very strong companies, with considerable resources—are very good at developing new information services; these are not easy to do. People are losing considerable sums on many of them. The question is, are the MFJ restrictions precluding the development of some information service that might be akin to inward WATS?

Brown: I do not see how anyone could know. However, I am very skeptical of the notion that simply because the RBOCs cannot be manufacturers or sell long-distance service interLATA, talented people are therefore being prevented from innovating.

Question: Mr. Brown, to what extent did aspirations of getting into the computer business and related businesses affect the decision to accept this decree? And to what extent were you disappointed, during the first three years, after the decree went into effect—that is, before you retired —as to the progress in that area?

Brown: Of course, one of the pros with respect to accepting the theory was that it would be accompanied by relief from the 1956 restrictions. I have to tell you in that period of the late 70s to early 80s, the 1956 decree restrictions were giving us a very hard time. They were the cause of a good many strained solutions in the FCC, and they were giving us all sorts of costs and pain with respect to what the Bell Labs should develop and what it should not. Meanwhile, members of Congress were introducing all sorts of legislative ideas about Chinese walls between regulated and unregulated activities. So it was a mess and it was very essential to get rid of that if we really were to become competitive. I had no illusions about the difficulty of competing with IBM et al. That is a tough business with good companies which are well established. I was, and am, expecting continued movement of AT&T into a more successful position in the computer business. I have no doubt it will continue. I wished it had happened sooner. It has been an expensive process.

Baxter: I must also say getting rid of the 1956 decree provisions, which I also regarded as an abomination, was one of the attractive features of the 1982 agreement. I regarded it as something I had to give away, in the sense it was a bargaining chip on my side of the table rather than AT&T's. The truth was that I was as anxious, as was Charlie Brown, to get rid of the 1956 decree.

Question: Mr. Brown, as you were making your comments about local rates, it made me think of a boxer who has just gone through a fifteen-round bout. Under constant advisement from his trainer—you being his trainer—he wins in the fifteenth round on a technical knockout and comes back to the corner. The trainer, who is not sweating, has been watching the totally exhausted boxer and says, "I told you it was going to happen in the fifteenth round." I went back and looked at some of the press clippings of 1982–1984 and found your prediction.

You almost pinpointed local rate increases of precisely 8 to 10 percent a year; and no one else pinpointed increases as accurately. I am curious what your thoughts might be on predicting the next five years.

Brown: I had some background and knowledge on rate matters that other people did not have. You may recall that some people even had the gall to deny there was any toll to local subsidy. I also had the conviction it was within the regulators' control to ease off the subsidy in an orderly way, and that is what happened. As far the future goes, I am much more interested in my golf handicap, and probably could predict it better.

Question: Mr. Brown, you said there were some other outcomes that were acceptable, but other parties would have gotten involved and mucked them up. If I understood you correctly, those were not alternatives that Mr. Baxter was offering. He was offering Quagmire I and II as an alternative to this divestiture. Am I correct in saying the only place where the two sets came together was with this settlement?

Brown: Both the House or the Senate over a period of years were proposing certain things, some of which were mutually consistent. But then, as each body of Congress responded to stakeholders, the proposals began to diverge. This made the situation so bad, we could not really live with it. During this time, one solution, advocated by some people, was to have a consent decree short of divestiture. That is what the DOJ people were in the process of contructing in 1980–1981. They were trying to come up with something which would at least partially satisfy their desires and would also satisfy some the things which were being considered in the Congress and the FCC. I am sure Bill Baxter's heart was never in this. It was just a coincidence of things going on in parallel. When it became apparent that none of these solutions were going to work, we both stepped back to the simplicity of Bill's theory.

Question: But that presumes some of the things going on in the Congress had some chance of coming to fruition.

Brown: Yes. As you know, my predecessor started to bring the matter to the Congress on the basis that we were operating under an outdated 1934 Act and that Congress should have set the policy. Everybody had gotten involved, including the FCC, which was being overruled by the courts in critical ways. We were looking for some solution which would avoid the breaking up of the Bell System. *Some* of the things that were in *some* of the Congressional bills at *some* time were things

we could live with, and those were the alternatives to which I referred. In any event, the process of trying to get acceptable legislation was exhausting and unproductive.

Besen: If AT&T had simply lost face and the litigation continued to run its course, what would the remedy have been at that point? What form would the whole thing have taken?

Baxter: I think it is very hard to tell. Certainly, I would have urged upon the Judge to decree precisely along the lines I urged on AT&T. But I think it is very unlikely that the Judge would have done that. I think the result would have been a sort of ceremonial fracturing of Western Electric and a few sacrificial operating companies here and there. In other words, something that looked much more like the decree I had seen in January 1981. But that is pure guess on my part. Who knows what the Judge would have been persuaded to do under those circumstances?

Brown: We were fairly convinced the Judge would operate on Western Electric. This is speculation also, but after reading and trying to analyze his moves and his questions, we expected that he would have forced the spin-off of Western Electric, perhaps in several pieces. As is obvious by our decision to enter into the consent decree, I did not want the largest company in the world to be reorganized by lawyers. The consent decree route let us reorganize it in a way we knew would work.

Question: This is addressed to both gentlemen. Do you have any advice for Congressional staff for drafting new legislation?

Brown: I believe it would be a real shame for Congress to jump into the middle of this complex matter and try to solve a problem that may not even exist. I do not speak for the current management of AT&T, but I expect they feel the same way. The thing ought to be given a chance to work rather than be interfered with by a piece of legislation full of compromises.

Baxter: Given the realities of the legislative process, I would be filled with despair at the prospect of new legislation. I think we were probably better off muddling through from where we are.

Question: I think it was widely believed Bell Laboratories was preeminent in the field of basic research. What was the thought process in terms of how to preserve that basic research capability, and how did that thought process enter into the eventual arrangement of the splitting of the Bell System?

Brown: The Bell Laboratories was split on essentially the same principles as the rest of the business. That is, those parts of the Labs dealing with local exchange matters were split off to what is now Bellcore, and those parts which were related to equipment manufacturing in the long-distance business were left with AT&T Bell Labs. Had we been forced to spin off Western Electric, I do not know how AT&T could have supported Bell Labs. It was certainly my contention—and has been that of my two successors—that the Bell Laboratories is a real asset to AT&T and to the country. My successors have continued to support the Labs. There is some discussion in this volume about the need to support research and development (R&D). AT&T was supporting the Bell Laboratories to the tune of about $2 billion at the time of divestiture. They are now supporting the Labs at a level of some $2.7 billion. The percentage of support related to the "R" part of R&D has remained about the same. In the order of 10 percent goes to Arno Penzias and his fundamental research people. So as long as AT&T has its health, I expect it will continue to support the Bell Laboratories and basic research.

Question: Just to follow up, it is conceivable that the amount of basic research has actually gone up.

Brown: It has. Just look at Bell Labs alone. Some of the RBOCs are doing basic research also.

Geller: I have one final question for Bill Baxter. As I recall, your deputy at Justice, Ron Carter, Chief Justice Rehnquist and others questioned the entire Tunney Act and MFJ process. They supported that you were really reviewing how the prosecutor handles his judgments on whether to prosecute or whether to settle, and that this was not a judicial function that could be given to an Article 3 court. Ron made a speech raising questions along these lines. What do you think of the Tunney Act process, and do you think it is something that is reviewable by the Supreme Court or a court of appeals?

Baxter: There are lots of things federal district judges do that are not very effectively reviewable by courts of appeals. I think Ron's point was flirtation with a separation-of-powers argument. I have been tempted by it again. It seems an arguable position, but was not one that seemed to me politically wise to push at that point.

Geller: Not then, but what about now?

Baxter: I do not have to write the brief now.

Questions Answered by Judge Greene

Question: Charles Brown has stated AT&T agreed to divestiture because the bargain struck by Theodore Vail no longer suited the different environment—that AT&T with its structure then was simply too big, and to move this huge monopoly into competitive endeavors such as those involving data processing (enhanced services) would mean continued harassment and claims of unfair competition. What would you characterize as the chief cause or causes of divestiture? In a nutshell, why did we break up AT&T?

Greene: I was, of course, not present during the discussions either within AT&T or between AT&T and the Justice Department, and I therefore do not know, of my own knowledge, what caused AT&T to agree to the divestiture. However, as best I can make out, there seem to have been at least three reasons for their decision. First, the company's management apparently realized it would be impossible in the 1980s for a giant corporation to maintain at the same time both a monopoly with secure profits and significant competitive enterprises, particularly those relating to computers and data processing in which AT&T was greatly interested. Second, and related to the first, was the apparent perception of Chairman Brown and other managers that the company would be unlikely to have a respite from attacks, no matter how the lawsuit was decided. The chances were the Bell System's competitors in long-distance and manufacturing, in particular, would continue and even step up their efforts in the courts, before the FCC, and in the Congress, and that this kind of defensive battle would never end. Third, AT&T management may have been convinced that the company would lose the government's antitrust suit, and they thought it best to settle before that happened.

Question: Some have described divestiture as an "experiment" or "gamble." Do you agree with that? With the theoretical argument and statistical data placed before the Court, as well as the record of AT&T's conduct, how much uncertainty and risk did you perceive when you approved the settlement of the case? To what extent was the decision based upon theoretical argument alone?

Greene: Let me answer this first of all by saying I did not regard divestiture as an experiment or a gamble. To the contrary, I was convinced then, and I remain convinced since, that the decree and the breakup was to be beneficial to the American public and the economy.

But even if I had not been so firmly convinced of that, it would have

been very difficult, as a matter of law, to reject the proposal submitted by the parties. The decree gave the government essentially all it had asked for when it filed the lawsuit. Given that circumstance, I would have been free under the law to reject the consent decree only if overriding and concrete reasons for such a rejection, plain for all to see, were present. The exact opposite was true. What flaws there were appeared to me to be relatively minor. Furthermore, of the 125 or so intervenors from all segments of American life—representatives of about half the states, most of AT&T's major competitors, all sorts of public interest and consumer groups—not one opposed the principles embodied in the decree.

Question: If AT&T had been found guilty at the conclusion of the trial, what remedies might have been available to you in fashioning relief? What factors would have weighed in the choice among them?

Greene: I cannot answer this question in the manner in which it is framed because I simply do not know whether ultimately I would have found for the government or, if I had, what the remedies would have been. There seems to be a general assumption I had decided to fight against AT&T because of the denial of the company's motions to dismiss and the explanations I gave at the time. The facts are much more straightforward and less Machiavellian than what has been credited to me.

The government, the plaintiff in the action, had made a prima facie case, and in the opinion I published at the time I recognized that fact. I then stated it was now the turn of the defendant, AT&T, to answer that case with its evidence, just as happens every day in hundreds of courtrooms. As for the explanation of my views, by way of an opinion, that was largely caused by AT&T itself. Before and at the time of filing its motion, AT&T's lawyers told me again and again that the company was entitled to know where it stood on each issue, so that it could concentrate its evidence on matters which were still being contested. After thinking about it, I came to the conclusion AT&T's counsel were right, and so I took the time and trouble to discuss all the proof that had been presented up to that time.

This effort was useful also in giving everyone, including the Court and the DOJ, a sort of road map of the status of the case. The department had been more or less improvising as it went along, and because of that, no one seemed to be entirely clear what was in the case and what was not. The opinion, incomplete as it was, served to present a picture of the entire case for the benefit of everyone.

Question: Are or should your actions be confined solely to antitrust considerations or can they appropriately take into account other factors? In particular, did concerns about the viability of the RBOCs and the effect of the decree on local ratepayers play an important role in your deliberations?

Greene: I have always placed antitrust considerations first and foremost in any decision regarding the antitrust decree. Clearly also, I did not want to take account of other policies that are in any way inconsistent with the antitrust laws, their objectives, or their purposes. But where other policies, particularly policies promulgated or endorsed by the Congress, such as universal telephone service, are complementary to or supportive of the decisions called for under antitrust principles, I saw no reason for not taking them into account. I might observe in passing that all the parties, including the Department of Justice and the Regional Companies, have strongly urged me from time to time to take such factors into account when this suited the particular purposes they were advocating at the time. At other times, of course, they object to such a course.

Question: Assistant Attorney General Baxter urged a strict quarantine approach for the divested Regional Companies—one that was modified in some significant respects by you after the Tunney Act process—e.g., sale of CPE, Yellow Pages. In his remarks in this volume, Baxter has argued that one important effect of those modifications was that they "sentenced us to having two regulators rather than one for a long period of time." Looking back, would you have any comment about your different tack?

Greene: Let me say first of all that I think very highly of Professor Baxter. Not only is he an outstanding lawyer and teacher and one of the nation's foremost antitrust experts, but it is also greatly to his credit that he was able courageously to face down the mighty Bell System at a time when he was only an Assistant Attorney General, and when most high officials in his own executive branch, including the heads of the Department of Commerce and Defense, were opposed to the lawsuit and to what he was about to do. Nevertheless, Professor Baxter is wrong in suggesting the continuing campaign of the Regional Companies to escape the line-of-business restrictions came about because the changes I required in the decree departed from the so-called quarantine theory. In my judgment, it is naive to think that the companies would not have made the same effort, just as vigorously and just as often, if

what Professor Baxter calls a more "elegant" theory had been adopted. That that is so can easily be documented.

Professor Baxter himself has acknowledged he was surprised the companies immediately after divestiture began to push for lifting the restrictions on the basis of what he calls a "ludicrous" theory. Since that time, many requests have been submitted that had to be rejected because they were no better founded, either in theory or in fact. Even under the quarantine theory, the restrictions would not have been immutable, but would have been subject to motions, requests, demands for clarification, and the like.

The DOJ announced as early as 1982, when Professor Baxter was still Assistant Attorney General, that the line-of-business restrictions were to be removed once the rationale therefore became outdated. Can anyone seriously believe such a formulation, or any variation, would not have afforded the Regional Companies the same opportunity as now to file motion upon motion for removing or narrowing the restrictions, or that the exercise of the Court's duty to rule on such motions would not have given rise to the same charges of "regulation" that we hear today? I do not.

Question: Why did you insist on changes which departed from the theoretical underpinnings of the decree as it had been submitted?

Greene: I yield to no one in my search for elegance in expression, but as I was not operating in an academic setting, I also had to consider the practicalities of the situation, and I am not sorry I did. The marketing of customer premises equipment and the publication of the Yellow Pages which I authorized, but which the proponents of a more "elegant" solution deplore, gave the local companies little or no potential for anticompetitive behavior. That being so, why restrict them? Such restrictions would have been especially unfortunate because the companies were able in these fields to make significant contributions to competitive markets, particularly since without their participation, AT&T, then still with well over 90 percent of market share, would have been completely dominant. Furthermore, by permitting the local companies to enter these businesses, it was possible to achieve lower telephone rates for the average residential and business subscribers; for the earnings from these new enterprises could be used to subsidize these rates. I thought then and I still believe today that this was a useful contribution.

Question: Were you surprised by the quick separation in points of views by the RHC's from AT&T?

Greene: I can honestly say the quick separation in points of view between AT&T and the local companies was a great surprise to me. I assumed, along with everyone else, that the Bell company culture would prevail for a long time, even as to those who became managers of the local and regional telephone enterprises. During the trial, it was repeatedly emphasized that in this respect AT&T was like the Marine Corps: once a Bell employee, always a Bell employee. However, as it turned out, the Regional Company managers began almost from the first day—and in one instance even before the actual divestiture—to take aggressive action against their former parent. In a sense, this was troublesome because it created some uncertainty and obviously more litigation. Nevertheless, on balance, this was a wholesome development, and the Regional Companies deserve congratulations for deciding so swiftly and so decisively to stand on their own. In that respect, they performed valiantly and with foresight.

Question: There has been much water under the bridge since divestiture was first announced. In connection with waiver and equal access debates, you have given close scrutiny to various aspects of the operation of the telephone networks and to the markets they serve. The MFJ has consumed substantial amounts of your time and that of your staff. On reflection, do you believe that there have been problems in the administration of the decree? If you could do it again, would you have arranged anything differently to alleviate any problems of administration?

Greene: Of course, interpretation and enforcement of the decree have taken a great deal of my time, and I often wished it could be otherwise. But the decree, as submitted by the parties, provides explicitly that my Court shall have continuing jurisdiction for enabling any of the parties "to apply to this Court at any time" for orders or directions for construing, enforcing, or modifying the decree. When such applications are made, I could no more escape the obligation to entertain and decide them than I could escape the obligation to conduct criminal or civil trials, or to carry out any of the other duties imposed upon courts by the Constitution, statute, or other judgments and decrees.

It is difficult to visualize what arrangements could have been made for enforcement and interpretation other than action by the courts. Court decrees are enforced by courts, certainly not by the litigants themselves. To have transferred enforcement to the FCC—the only other conceivable entity on the horizon—would have been not only contrary to a hundred years of practice and precedent under the Sherman Act, but it would have been particularly inappropriate in this

instance. It was the ineffectiveness of the FCC in coping with the problem of anticompetitive activity in the telecommunications industry that led to the antitrust suit and hence the decree in the first place.

Question: How did the concept of the Triennial Review come about? Would you have any comment or assessment of that process based on the actual experience?

Greene: The Triennial Review was strictly a Department of Justice idea, which I merely accepted. Professor Baxter's suggestion that the concept of such a review (1) was introduced at a much later time and (2) was introduced at the insistence of the Judge, is in error on both counts. The Triennial Review was proposed by his department when he was still there. The Review was intended to be a device for determining the status of the decree at a particular point in time, although it is not nearly as necessary now as it seemed when first proposed. The incessant stream of requests by the Regional Companies in effect compel an ongoing and continuing review.

Question: Were you surprised by the DOJ's reversal of policy in the Triennial Review? Would you have any comment on the effectiveness of the DOJ in implementing the MFJ?

Greene: Except for the quick independence of action displayed by the Regional Companies, my greatest surprise was the DOJ's reversal of policy. The department was the author and toughest protagonist of a wide-ranging and effective decree. In fact, the department initially objected when I suggested even relatively minor ameliorating changes. Insofar as the restrictions on the regional companies were concerned, the department wanted them as strict and as inflexible as possible.

In light of this background, it was quite shocking that the same department changed its entire attitude within a relatively short time, as new officials came in. Perhaps I should not have been so surprised because a similar flip-flop occurred in connection with the 1949 antitrust suit against the Bell System. That suit was ended by a consent decree at the behest of the then Attorney General several years later under circumstances that were investigated and severely criticized in Congress.

I might add that, although the present Department of Justice officials are taking an attitude totally at odds with that of their predecessors who wrote, sponsored, and explained the decree, in terms of the meaning of that document what is important, of course, is what its authors said at the time of its adoption, not what policies successor officials may advocate now.

As for the question of department effectiveness in implementing the decree, there is no evidence that the department has been guilty of bad faith. However, obviously any implementation and enforcement will suffer if they are undertaken by people who do not believe in the decree, and say so publicly at every opportunity.

Question: Even in the absence of trial evidence, you have made a strong distinction from the beginning with regard to content provision by telecommunications monopolies—the electronic publishing provision as to AT&T and the transmission-content delineation as to information services of the Regional Companies. Would you comment on this distinction and its importance?

Greene: The restriction on the provision of information services by the Regional Companies was not my idea; it was in the original decree submitted by the parties, although I did add a temporary prohibition on electronic publishing by AT&T. As the decree implicitly acknowledges, information services are as sensitive to discrimination and cross-subsidization as long-distance service and manufacturing. For that reason, the inclusion of the restriction on information services cannot be regarded as particularly controversial in terms of the decree as a whole. My Court authorized the removal of the restriction on the transmission of information services for very pragmatic reasons: as long as the Regional Companies are not involved with content, they have no incentive to discriminate with respect to transmission, and it may therefore be confidently predicted they will not do so.

On the broader question, it must be remembered that the First Amendment demands a diversity of sources of information for the American people. It is quite possible that the Regional Companies, with their bottomless pockets stemming from their ability to generate funds from captive ratepayers, and their monopolies on transmission, would be able to crowd out everyone else, to the detriment of a free press, if they were able to generate information content as well as to transmit it in competition with information generated by others. The purely economic consequences which would follow from a removal of the other restrictions would be augmented in the information field by adverse consequences of a quasi-constitutional nature if one group of companies were positioned to gain de facto control of news and information in the United States. This factor supports the antitrust rationale for the restriction on the generation of content-of-information services.

Question: The antitrust court, and particularly your extraordinary ability to handle this massive, complex case, were certainly needed to effect

structural relief (divestiture of the bottleneck "tails"). Congress would not do it, and the FCC could not. But once that all-important task was accomplished, including supervising the cutover to equal access, a considerable part of what is now left has been termed by the DOJ as more akin to the regulatory process—such as the processing of requests for waiver of the line of business restrictions. Would you comment on whether such activities are more appropriate for the regulatory agency (FCC)?

Greene: It is quite true the DOJ and the Regional Companies have sought to affix the "regulation" label to the exercise of responsibilities by the court under the AT&T decree. But calling it regulation does not make it so. What the Court is doing is nothing more or less than the enforcement of the consent decree, essentially as the DOJ and AT&T wrote it. The "regulation" label, inaccurate as it is, fits in very neatly with the effort of some to transfer enforcement of the antitrust decree to the federal regulators in the hope this will result in its emasculation.

Question: If there were such a transfer, Congress could readily exercise its oversight of the activities of the regulatory agency. What would you say is the relationship between the antitrust court and the Congress? Would you have comment on the criticism voiced by some critics on the Hill that you are making policy properly reserved to the Congress?

Greene: What my Court is doing with regard to the decree is scrupulously in accord with the will of Congress as expressed in its legislation. The Court's role stems from the Sherman Act which explicitly authorized lawsuits against antitrust violators by the DOJ, among others. The Attorney General filed such a suit in my Court, and I entertained it, as I must under the statute. Eventually, the DOJ and the defendant settled that lawsuit on the basis of a consent decree, and I approved that decree as in the public interest, as I also had to do under another congressional mandate—the Tunney Act. As I stated earlier, the decree requires me to entertain applications from the parties for interpretation and enforcement, and I am doing that, too, as I must. It so happens that the decree was affirmed by the Supreme Court. Therefore, it stands out as a document explicitly sanctioned or approved at the highest levels of all three branches of government.

Some may now want a different policy. It is obvious it is Congress' prerogative to make or remake both antitrust and telecommunications law and policy as it sees fit. I do not have any doubt about that proposition; quite the contrary. In my view, as the elected representatives of the people, the national legislators are plainly entitled under our con-

stitutional system to set broad policy on any subject under federal jurisdiction.

I do not agree, however, with the assertion the FCC is Congress' alter ego, and the Court should therefore turn the decree over to it. These claims are wrong as matter of law, since antitrust enforcement has never been delegated by the Congress to the FCC, and since the agency has no particular expertise in that area. The claim the FCC must be equated with the Congress is in error also as a matter of fact; the FCC has many times in recent years significantly deviated from the Congressional will.

Question: Both the antitrust court and the FCC necessarily act in the same areas at times. Would you comment on the relationship between the Court and the Commission? Has your view of the effectiveness of the FCC evolved over time, and if so, how?

Greene: As a consequence of the entry of the antitrust decree the Court necessarily affects telecommunications, and the FCC naturally is not happy, given the fact that points of friction have not been as severe as they could have been. I have bent over backward not to become involved in matters, such as rates, that were marginal to the decree but of real significance to the Commission. For example, early on I delayed again and again a deadline specified in the decree for the Regional Companies' provision of exchange access pursuant to tariffs approved by the FCC, because the Commission felt it needed more time. The only serious problem I can think of occurred when an FCC chairman made a public statement he was surprised by the "apparent acquiescence" of some of the Regional Companies in the ongoing administration of the decree, as if compliance of litigants with court orders were an occasion for regret. When this became a matter of public notoriety, the official stated all he had meant was that the Regional companies should file more briefs and pursue legislative remedies. That explanation may be taken with a grain of salt, as it would have been physically almost impossible for the Regional Companies to file more briefs than they were already filing. Their briefs, responses, oppositions, replies, supplemental memoranda, and attachments have consistently occupied more space in our courthouse than the filings of any other parties in any other litigation. And, of course, the Companies have not been shy about seeking legislation.

Question: What do you consider the greatest success of the MFJ? The greatest failure, if any?

Greene: The greatest successes of the decree seem to me to have been, first, the burst of innovation in telecommunications, which benefited both industry and the average consumer, and which far surpassed what the Bell monopoly had done in any comparable period; second, the appearance on the scene of a considerable number of vigorous, inventive, independent companies, particularly in manufacturing, but also in other telecommunications markets; third, the emergence of real competition in long-distance and the resulting substantial reductions in rates and the equally substantial increases in usage; and finally, the taking of the first steps toward the achievement of broad-based information services in this country. As for failure, I regard it as very unfortunate that the public has been inconvenienced with respect to installation, repair, the payment of bills, and the like, by the establishment of several telephone companies in place of the ubiquitous Bell System, and I wished it had been possible in advance to take steps to mitigate these problems. I also regard it as a failure the majority of the public has apparently not become convinced the emergence of competition is yielding benefits that outweigh that inconvenience, and a significant degree of public dissatisfaction therefore persists.